

HOUSE BILL 379

I3

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By: **Delegates Rosenberg, Feldman, and Frick**

Introduced and read first time: January 28, 2010

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 21, 2010

CHAPTER _____

1 AN ACT concerning

2 **Consumer Protection – Transparency in Consumer Arbitrations Act**

3 FOR the purpose of requiring certain arbitration organizations to collect, publish, and
4 make available to the public certain information relating to certain binding
5 arbitrations to which a consumer is a party; requiring the information to be
6 reported beginning on a certain day and to be updated at certain intervals
7 thereafter; requiring the information to be made available to the public in a
8 certain manner; providing that the information may be considered in making a
9 certain determination; providing that an arbitration organization is not liable
10 for collecting, publishing, or distributing certain information; providing that
11 failure to comply with certain provisions of this Act may not be the sole reason
12 to refuse to enforce a certain award, ~~may constitute an unfair or deceptive trade~~
13 ~~practice under the Maryland Consumer Protection Act under certain~~
14 ~~circumstances,~~ and may be considered as a factor in making a certain
15 determination about a consumer arbitration agreement; authorizing a consumer
16 ~~or the Attorney General~~ to seek an injunction to prohibit an arbitration
17 organization from taking certain actions; providing that an arbitration
18 organization is liable to a certain person for certain attorney's fees and costs
19 under certain circumstances; providing that a violation of a certain provision of
20 this Act is an unfair or deceptive trade practice under the Maryland Consumer
21 Protection Act and is subject to certain enforcement and penalty provisions;
22 defining certain terms; and generally relating to consumer arbitrations.

23 BY adding to

24 Article – Commercial Law

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Section 14–3801 through 14–3805 to be under the new subtitle “Subtitle 38.
2 Transparency in Consumer Arbitrations Act”
3 Annotated Code of Maryland
4 (2005 Replacement Volume and 2009 Supplement)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article – Commercial Law**

8 **SUBTITLE 38. TRANSPARENCY IN CONSUMER ARBITRATIONS ACT.**

9 **14–3801.**

10 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
11 INDICATED.

12 (B) “ARBITRATION ACTIVITY” MEANS THE INITIATION, CONDUCT,
13 SPONSORSHIP, OR ADMINISTRATION OF, OR THE APPOINTMENT OF AN
14 ARBITRATOR IN, A CONSUMER ARBITRATION.

15 (C) “ARBITRATION ORGANIZATION” MEANS A NONGOVERNMENTAL
16 ASSOCIATION, AGENCY, BOARD, COMMISSION, CORPORATION, OR OTHER ENTITY
17 THAT PERFORMS ARBITRATION ACTIVITIES.

18 (D) “CONSUMER” MEANS AN INDIVIDUAL WHO IS:

19 (1) A RESIDENT OF THE STATE; AND

20 (2) AN ACTUAL OR PROSPECTIVE PURCHASER OR LESSEE OF ANY
21 GOODS, SERVICES, REAL PROPERTY, OR CREDIT PRIMARILY FOR PERSONAL,
22 FAMILY, OR HOUSEHOLD PURPOSES.

23 (E) (1) “CONSUMER ARBITRATION” MEANS A BINDING ARBITRATION
24 CONDUCTED IN ACCORDANCE WITH A CONSUMER ARBITRATION AGREEMENT.

25 (2) “CONSUMER ARBITRATION” DOES NOT INCLUDE A BINDING
26 ARBITRATION CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF A POLICY
27 OF PROPERTY INSURANCE, CASUALTY INSURANCE, OR SURETY INSURANCE, AS
28 THOSE TERMS ARE DEFINED IN § 1–101 OF THE INSURANCE ARTICLE.

29 (F) (1) “CONSUMER ARBITRATION AGREEMENT” MEANS A
30 STANDARDIZED CONTRACT THAT:

1 **(I) IS BETWEEN A CONSUMER AND ANOTHER PERSON WHO**
2 **IS NOT A CONSUMER;**

3 **(II) PROVIDES FOR THE SALE OR LEASE OF ANY GOODS,**
4 **SERVICES, REAL PROPERTY, OR CREDIT PRIMARILY FOR PERSONAL, FAMILY, OR**
5 **HOUSEHOLD PURPOSES; AND**

6 **(III) REQUIRES THAT DISPUTES ARISING UNDER THE**
7 **CONTRACT BE SUBMITTED TO BINDING ARBITRATION.**

8 **(2) “CONSUMER ARBITRATION AGREEMENT” DOES NOT INCLUDE**
9 **A PUBLIC OR PRIVATE SECTOR COLLECTIVE BARGAINING AGREEMENT.**

10 **14-3802.**

11 **THIS SUBTITLE APPLIES TO AN ARBITRATION ORGANIZATION THAT**
12 **PERFORMS AN ARBITRATION ACTIVITY RELATED TO 50 OR MORE CONSUMER**
13 **ARBITRATIONS DURING A 5-YEAR PERIOD.**

14 **14-3803.**

15 **(A) AN ARBITRATION ORGANIZATION SUBJECT TO THIS SUBTITLE**
16 **SHALL COLLECT, PUBLISH, AND MAKE AVAILABLE TO THE PUBLIC THE**
17 **FOLLOWING INFORMATION REGARDING EACH CONSUMER ARBITRATION FOR**
18 **WHICH IT PERFORMED AN ARBITRATION ACTIVITY DURING THE PRECEDING**
19 **5-YEAR PERIOD:**

20 **(1) IF THE NONCONSUMER PARTY IS A CORPORATION OR OTHER**
21 **BUSINESS ENTITY, THE NAME OF THAT PARTY;**

22 **(2) WHETHER THE DISPUTE INVOLVED GOODS, SERVICES, REAL**
23 **PROPERTY, OR CREDIT;**

24 **(3) THE TYPE OF CLAIM OR CAUSE OF ACTION ALLEGED;**

25 **(4) WHETHER THE CONSUMER OR NONCONSUMER PARTY WAS**
26 **THE PREVAILING PARTY;**

27 **(5) THE NUMBER OF TIMES DURING THE REPORTING PERIOD**
28 **THAT THE NONCONSUMER PARTY HAS BEEN A PARTY IN A CONSUMER**
29 **ARBITRATION FOR WHICH THE ARBITRATION ORGANIZATION PERFORMED AN**
30 **ARBITRATION ACTIVITY;**

31 **(6) WHETHER THE CONSUMER PARTY WAS REPRESENTED BY AN**
32 **ATTORNEY AND, IF SO, THE NAME OF THE ATTORNEY;**

1 **(7) THE DATE THE ARBITRATION ORGANIZATION RECEIVED THE**
2 **DEMAND FOR THE CONSUMER ARBITRATION, THE DATE THE ARBITRATOR WAS**
3 **APPOINTED, AND THE DATE OF DISPOSITION BY THE ARBITRATOR OR**
4 **ARBITRATION ORGANIZATION;**

5 **(8) IF KNOWN, THE TYPE OF DISPOSITION OF THE DISPUTE,**
6 **INCLUDING WITHDRAWAL, ABANDONMENT, SETTLEMENT, AWARD AFTER**
7 **HEARING, AWARD WITHOUT HEARING, DEFAULT, OR DISMISSAL WITHOUT**
8 **HEARING;**

9 **(9) THE AMOUNT OF THE CLAIM, THE AMOUNT OF THE AWARD,**
10 **AND ANY OTHER RELIEF GRANTED;**

11 **(10) THE NAME OF THE ARBITRATOR, THE ARBITRATOR'S TOTAL**
12 **FEE FOR CONDUCTING THE CONSUMER ARBITRATION, AND THE PERCENTAGE**
13 **OF THE ARBITRATOR'S FEE ALLOCATED TO EACH PARTY; AND**

14 **(11) THE ADDRESS OF THE PREMISES WHERE THE CONSUMER**
15 **ARBITRATION WAS CONDUCTED AND THE NAME OF THE OWNER OR LESSEE OF**
16 **THE PREMISES.**

17 **(B) (1) THE INFORMATION REQUIRED UNDER SUBSECTION (A) OF**
18 **THIS SECTION:**

19 **(I) SHALL BE REPORTED BEGINNING ON THE FIRST DAY OF**
20 **THE MONTH IMMEDIATELY FOLLOWING THE MONTH AN ARBITRATION**
21 **ORGANIZATION BECOMES SUBJECT TO THIS SUBTITLE; AND**

22 **(II) SHALL BE UPDATED AT LEAST QUARTERLY**
23 **THEREAFTER.**

24 **(2) AN ARBITRATION ORGANIZATION THAT BECOMES SUBJECT TO**
25 **THIS SUBTITLE BEFORE JULY 1, 2015, SHALL REPORT THE INFORMATION**
26 **REQUIRED UNDER SUBSECTION (A) OF THIS SECTION TO THE EXTENT IT IS**
27 **AVAILABLE.**

28 **(C) THE INFORMATION REQUIRED UNDER SUBSECTION (A) OF THIS**
29 **SECTION SHALL BE MADE AVAILABLE TO THE PUBLIC:**

30 **(1) IN A COMPUTER-SEARCHABLE FORMAT THAT:**

31 **(I) IS ACCESSIBLE AT THE INTERNET WEBSITE OF THE**
32 **ARBITRATION ORGANIZATION; AND**

1 (II) MAY BE DOWNLOADED WITHOUT A FEE; AND

2 (2) IN WRITING:

3 (I) ON REQUEST; AND

4 (II) AT A FEE THAT DOES NOT EXCEED THE ACTUAL COST TO
5 THE ARBITRATION ORGANIZATION OF COPYING THE INFORMATION.

6 14-3804.

7 THE INFORMATION PROVIDED BY AN ARBITRATION ORGANIZATION
8 UNDER § 14-3803 OF THIS SUBTITLE MAY BE CONSIDERED IN DETERMINING
9 WHETHER A CONSUMER ARBITRATION AGREEMENT IS UNCONSCIONABLE OR
10 OTHERWISE UNENFORCEABLE UNDER LAW.

11 14-3805.

12 (A) AN ARBITRATION ORGANIZATION IS NOT LIABLE FOR COLLECTING,
13 PUBLISHING, OR DISTRIBUTING THE INFORMATION REQUIRED UNDER §
14 14-3803 OF THIS SUBTITLE.

15 (B) FAILURE TO COMPLY WITH § 14-3803 OF THIS SUBTITLE:

16 (1) MAY NOT BE THE SOLE REASON TO REFUSE TO ENFORCE AN
17 AWARD MADE IN A CONSUMER ARBITRATION; AND

18 ~~(2) MAY CONSTITUTE AN UNFAIR OR DECEPTIVE TRADE~~
19 ~~PRACTICE UNDER § 13-301 OF THIS ARTICLE, AS DETERMINED BY A COURT OF~~
20 ~~COMPETENT JURISDICTION; AND~~

21 ~~(3)~~ (2) MAY BE CONSIDERED AS A FACTOR IN DETERMINING
22 WHETHER A CONSUMER ARBITRATION AGREEMENT IS UNCONSCIONABLE OR
23 OTHERWISE UNENFORCEABLE UNDER LAW.

24 (C) (1) A CONSUMER ~~OR THE ATTORNEY GENERAL~~ MAY SEEK AN
25 INJUNCTION TO PROHIBIT AN ARBITRATION ORGANIZATION THAT HAS
26 ENGAGED IN OR IS ENGAGING IN A VIOLATION OF § 14-3803 OF THIS SUBTITLE
27 FROM CONTINUING OR ENGAGING IN THE VIOLATION.

28 (2) THE ARBITRATION ORGANIZATION IS LIABLE TO THE PERSON
29 BRINGING THE ACTION FOR AN INJUNCTION FOR THE PERSON'S REASONABLE
30 ATTORNEY'S FEES AND COSTS IF:

31 (I) THE COURT ISSUES THE INJUNCTION; OR

1 **(II) THE ARBITRATION ORGANIZATION VOLUNTARILY**
2 **COMPLIES WITH § 14-3803 OF THIS SUBTITLE AFTER THE ACTION IS FILED.**

3 **(D) IN ADDITION TO THE REMEDY PROVIDED UNDER SUBSECTION (C)**
4 **OF THIS SECTION, A VIOLATION OF § 14-3803 OF THIS SUBTITLE IS:**

5 **(1) AN UNFAIR OR DECEPTIVE TRADE PRACTICE WITHIN THE**
6 **MEANING OF TITLE 13 OF THIS ARTICLE; AND**

7 **(2) SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS**
8 **CONTAINED IN TITLE 13 OF THIS ARTICLE.**

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 July 1, 2010.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.